

SPECIAL PROVISION

CHAPTER SP-6 PAYMENT; PRICE ADJUSTMENTS

Chapter 6, Sections 6.1 through 6.4 of the GCDB is amended by being deleted in its entirety and replaced with the following SP-6.1 through SP-6.4.

This Chapter describes and specifies the lump sum pricing concepts and the means of determining the payment for the progress of Work.

SP-6.1 Lump Sum Pricing Concept

(a) The Design-Builder is required to break their Price down into a City-provided list of Price Items, referred to as the "Schedule of Prices." The sum of all the Price Items on the Schedule of Prices will be the Lump Sum Contract Price. The Schedule of Prices typically defines a summary level of Price items.

(b) Upon selection and prior to first payment, the Design-Builder is required to further break down the Schedule of Prices into a "Schedule of Milestones" (SM). The SM is intended to provide linkage between the Baseline Schedule, Project Work Breakdown Structure (WBS) and the Schedule of Prices. The Design-Builder shall provide a Schedule of Milestones that is itemized by Pay Items that corresponds to the Schedule of Prices for comparative analysis purposes. The Design-Builder is paid the agreed upon amount upon satisfactory completion of the Pay Item,

Authorized changes to the firm price Contract are entered as separate line items on the SM and measured as mutually determined between the Design-Builder and the City:

(c) Relationship to the Baseline Schedule and City-provided WBS. The Pay Item itemization is based on the Design-Builder's Baseline Schedule and shall utilize the City-provided WBS which provides a common framework for comparative analysis of cost and schedule progress.

(d) General requirements for establishing SM Pay Items:

(1) The Project shall be divided into Sections, as follows:

(A) Preliminary and General Requirements:

- Mobilization;
- Project Management / Construction Management (PM/CM);
- Quality Management; and
- Safety & Security.

(B) Engineering & Design – itemized into Design Units reflective of the construction Milestones and the sequence of design development by the Design-Builder;

(C) Maintenance of Traffic– Design-Builder shall itemize this Section into construction Milestones relating to traffic control activities;

(D) Environmental Compliance – Design-Builder shall itemize this Section into construction Milestones relating to Environmental Compliance activities;

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(E) Public Information / Coordination – Design-Builder shall itemize this Section into construction Milestones relating to Public Information and Coordination activities;

(F) Construction Milestone 1 – Design-Builder shall itemize this Section into sequential construction activities by their associated Milestone. For example, Milestone 1 may consist of:

- Site Preparation;
- Utility Relocations;
- Foundation below grade;
- Column(s);
- Superstructure;
- Rail Installation; and
- Site Restoration.

(G) Construction Milestone 2;

(H) Construction Milestone 3; and

(I) Construction Milestone 4, and so on as defined by the Design-Builder's Schedule.

(2) Pay item measurement and payment shall be based on lump sum values assigned to engineering and design Milestones (Section "B" items), material delivery and construction Milestones (Section "C", "D" and beyond) and fixed monthly values for project-wide activities (Section "A" items) as defined in the Design-Builder's Schedule.

(3) Completion of Milestones, established for each pay item, shall serve as the basis of payment for Sections B, C, D and beyond. Section A items shall be based on monthly fixed payments scheduled over the timeline of an active item. Do not describe SM pay items in terms of "percent complete." A date or days from NTP should be used to establish the planned completion date of the assigned value.

(4) The following restrictions are established for SM pay item values assigned to Section A activities.

(5) Mobilization shall not exceed a fixed total of six percent (6%) of construction value and shall be made up of three partial installments, as follows:

(A) When five percent (5%) of the total contract price is earned, fifty percent of the mobilization amount will be paid;

(B) When ten percent (10%) of the total contract price is earned, seventy-five percent of the mobilization amount will be paid; and

(C) When twenty percent (20%) of the total contract price is earned, one hundred percent of the mobilization amount will be paid.

(6) PM / CM shall not exceed a fixed total of ten percent (10%) of construction value, spread out over equal monthly installments.

(7) Quality management shall not to exceed a fixed total of five percent (5%) of construction value, spread out over equal monthly installments.

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(8) Maintenance of traffic (MOT) shall not exceed a fixed total of two and a half percent (2.5%) of construction value, spread out over equal monthly installments.

(9) Safety and security shall not exceed a fixed total of one and a half percent (1.5%) of construction value, spread by equal monthly installments.

(10) Environmental compliance shall not exceed a fixed total of three percent (3%) of construction value, spread out over equal monthly installments.

(11) Public information support and coordination shall not exceed a fixed total of one percent (1%) of construction value, spread out over equal monthly installments.

(12) Monthly installments for Section A activities exclude draft and final management plans required to be submitted for City review. Milestone Pay Items shall be established for these items using lump sum value.

(e) Request for Monthly Progress Payment. The Design-Builder shall submit monthly progress pay estimates for the City to process. The request shall consist of status of the SM Pay Items for the current month and cumulative to date.

(f) City Processing Progress Payment Request. The Design-Builder shall prepare and submit the SM for City review. Upon City-acceptance, the SM is then used for monthly progress payment requests. The payment request shall contain the update of the SM, Baseline Schedule, and a progress narrative addressing, at a minimum, areas of concern.

A sample "Schedule of Milestones" can be found in Section SP-6.15.

SP-6.2 Contract Periodic Payment Schedule

(a) The Design-Builder shall provide a projection of the monthly payment schedule for the life of the Project, referred to here as the Contract Periodic Payment Schedule (PPS-C). The PPS-C should reflect the Project schedule and the calculated value from the Schedule of Milestones as planned to be completed on a monthly (periodic) basis. The table should also reflect the cumulative value which will equal the contract lump sum price at project end.

(b) Design-Builder shall develop and submit the PPS-C to the City within forty-five (45) Working Days of Notice to Proceed (NTP) for review and written acknowledgement. The PPS-C, upon written acceptance of the City, will be incorporated into the Contract.

(c) Revisions to the PPS-C shall be allowed only for authorized Change Orders. The Design-Builder shall submit a revised PPS-C should there be significant schedule changes and/or Contract Price modifications to the City for Review and Comment. No other changes to the PPS-C will be accepted.

SP-6.3 Schedule of Values and Unit Prices

(a) The City may accept Exhibit 17, Schedule of Values. In accepting Exhibit 17, the City may delete, at its sole discretion, any items and their associated Unit Prices listed on Exhibit 17, Schedule of Values, and include the revised Exhibit 17 in the Contract.

(b) Exhibit 17 will be incorporated into the Contract when and if the City accepts it. The Unit Prices shown on Exhibit 17 will be the Unit Price for Change Orders for all additions or deletions of Work included in the items on Exhibit 17. The prices shown on Exhibit 17 will include the cost of all construction labor, Equipment, Material, project management, and Design-Builder and Subcontractor markups.

(c) The Unit Prices shown on Exhibit 17 do not include engineering or design costs.

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(d) The purpose of the Schedule of Values is to implement a Contract change that places a portion of the Work on a "unit price" payment basis and/or track and pay for quantities installed. Force Account Work would be paid based on the Schedule of Values.

(e) Revisions to the Schedule of Values, if utilized, will be made by Change Order.

SP-6.4 Allowance Items

(a) Payment for allowance items, if incorporated into the Work, shall be included in the Schedule of Milestones and the PPS-C as separate Pay Items. Unless otherwise specified in the RFP, the Design-Builder shall be reimbursed from the allowance items as follows:

(1) For utility-owner allowance, no markup of any kind will be allowed; and

(2) For additional off-duty police officers, the reimbursement shall also include the administrative fees charged by the Honolulu Police Department, plus twenty percent inclusive of any administrative costs, overhead / profit, bond fee, and applicable taxes.

Chapter 6, Sections 6.8 through 6.9 of the GCDB is amended by being deleted in its entirety and replaced with the following SP-6.8 through SP-6.9.

SP-6.8 Price Adjustments

(a) The Lump Sum Contract Price shall be increased or decreased only by Change Order issued in accordance with Chapter 5 of the GCDB and as supplemented by Chapter SP-5 of the Special Provisions. Each Change Order shall be reflected on the Schedule of Milestones as a separate line item. Payment against a Change Order will be made based on a mutually agreed upon method of progress measurement for the changed Work. In addition the Design-Builder shall revise the PPS-C accordingly and any other table or schedule to reflect the authorized change.

(b) Any adjustments in Contract Price made pursuant to the Contract shall be determined in one or more of the following ways: [HRS 103D-501(b); HAR 3-125-13]

(1) By agreement on a fixed price adjustment before commencement of the pertinent performance;

(2) By unit prices specified in the Contract or subsequently agreed upon before commencement of the pertinent performance;

(3) By the costs attributable to the events or situations under such clauses with adjustment of profit or fee, as specified in the Contract or subsequently agreed upon before commencement of the pertinent performance;

(4) In any other manner as the parties may mutually agree upon before commencement of the pertinent performance;

(5) In absence of agreement between the parties, the provisions of HRS 103D-501(b)(5), shall apply.

(c) The Design-Builder shall be required to submit cost or pricing data if any adjustment in Contract Price is subject to the provision of HRS 103D-312, or the City considers that such price is not reasonable. The submission of any cost or pricing data shall be made subject to the provisions of HAR Chapter 3-122, Subchapter 15. A Change Order or other documents permitting billing for the adjustment in price under any method listed above in this Section shall be executed by both parties.

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(d) Price adjustment pertaining to material changes to the Geotechnical Baseline Report (GBR) and Differing Site Conditions provisions, SP-4.19 and SP-9.6, shall be properly documented and agreed to by both parties. Upon construction completion of a particular Section, the net impact of foundation costs, due to differing site condition changes shall be determined. Design-Builder shall provide documented justification post-construction of the material differences between actual ground conditions and those established in the GBR incorporating those means and methods used during construction to mitigate impacts. Price adjustments (increase or decrease in firm price) will not be made singly for each subgrade foundation, but instead shall be made on a cumulative basis, using an average of impacts or price adjustments for work satisfactorily completed under the construction Section defined or set forth in the Schedule of Milestones.

SP-6.9 Contract Payments

(a) Payments to the Design-Builder for Work satisfactorily performed will be made monthly:

(1) Scope of Payment. Design-Builder shall receive and accept compensation provided for in the Contract as full payment for furnishing all Material and for performing all Work under the Contract in a complete and acceptable manner and for all risk, loss, damage, or expense of whatever character arising out of the nature of the Work or the prosecution thereof.

(2) Payment Concept. Payment will be calculated using the SM Pay Item table and compared to the PPS-C.

(3) Payment does not imply acceptance of Work. The granting of any payment by the City, or the receipt thereof by the Design-Builder, shall in no way imply acceptance of Work. The unsatisfactory character of such Work, Equipment, components or workmanship that do not conform to the requirements of this Contract may be rejected by the City and in such case must be replaced by the Design-Builder without delay.

(b) Payment will be based on the Schedule of Milestones and the City-accepted PPS-C. No payment will be made based on the PPS-P:

(1) Progress Payments. No payment will be made for Work until its completion in accordance with the specifications; and

(2) No Payment on Design-Builder's Non-Compliance. Payments are subject to compliance with any lawful or proper direction to the Design-Builder by the City or its designee concerning the Work or Material. See also Section SP-6.1(B).

Chapter 6, Sections 6.12 of the GCDB is amended by being deleted in its entirety and replaced with the following SP-6.12.

SP-6.12 Subcontractor Payment

(a) The Design-Builder shall maintain records and documents of payments to Subcontractors for three (3) years following the final inspection and acceptance of the Work. These records must be available for inspection upon request by any authorized representative of the City and the U.S. Department of Transportation (US DOT). This requirement also extends to any Subcontractor.

(b) The Design-Builder shall pay each Subcontractor for satisfactory performance of the subcontract no later than 10 days from the receipt of each payment the Design-Builder receives from the City, and each Subcontractor shall in turn make payment to its Subcontractors within ten (10) days of receipt of payment. This clause applies to both DBE and non-DBE subcontractors. The retention amount withheld by the Design-Builder from its subcontractors of any tier shall not be more than the same percentage of retainage as that of the Design-Builder (See Section SP-6.5).

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(c) The City will review payments to DBE Subcontractors to ensure that the actual amount paid to Subcontractors is consistent with the dollar amounts stated in the schedule of DBE participation.

(d) The City will bring to the attention of the US DOT any false, fraudulent, or dishonest conduct by the Design-Builder in connection with the Federal requirements and the DBE program, so that the US DOT can take the steps (e.g., referral to the Department of Justice for criminal prosecution, referral to the US DOT Inspector General, action under suspension and debarment or Program Fraud and Civil Penalties rules) provided in Subpart F of 2 CFR, Part 1200.

The City will consider action under its legal authorities, including responsibility determinations in future contracts, for any false, fraudulent, or dishonest conduct by the Design-Builder in connection with the Subcontractor information or payments.

Chapter 6 of the GCDB is amended by the following being added as new Sections SP-6.15 through SP-6.17.

SP-6.15 Eliminated Items

(a) Should any Work required by the Contract be found unnecessary, the City may, upon written order to the Design-Builder, eliminate such items from the Contract.

(b) When the Design-Builder is notified of the elimination of Work, actual Work done and all costs incurred will be reimbursed, including mobilization of Materials before said notification. No allowance, except as provided herein, will be made for any increased expense, loss of expected reimbursement, or loss of anticipated profits claimed by the Design-Builder resulting directly from such elimination.

(c) The Change Order authorizing reimbursements shall show how the reimbursements were derived. Except when otherwise authorized by the City, such derivation shall show breakdowns of costs as detailed in Section SP-5.

SP-6.16 Acceptance and Substantial Completion

(a) Substantial Completion. When the Design-Builder considers that the Project is substantially complete, the Design-Builder shall so notify the City in writing.

Within fourteen (14) Calendar Days of receipt of the Design-Builder's written application for a certificate of Substantial Completion, the City, in the company of the Design-Builder, will inspect the Project covered by the notice. During the inspection, the Work will be examined and QC documentation will be reviewed. The City will prepare a written list of outstanding items, if any, to be completed or corrected before issuance of the certificate of Substantial Completion. The list shall be included in the QA/QC documentation with an agreed date of correction for each deficiency.

The Design-Builder shall complete or correct the outstanding items, if any, to be done before issuance of the certificate of Substantial Completion and request re-inspection by the City in writing.

Within seven Calendar Days of the Design-Builder's request for re-inspections, the City will re-inspect the Project and issue notification of Substantial Completion if the outstanding items noted for Substantial Completion during the inspection are completed or corrected.

(b) Final Acceptance. Upon receipt of written notice from the Design-Builder of the projected completion date of all of the requirements for the Project, the City will inspect or review any remaining portions of the Project not inspected at the time of issuance of the certificate of Substantial Completion and review any activities required under the Contract not completed at the time of Substantial Completion on the

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projected completion date to verify that all Work items, including surveys, As-Built Plans, and Design Acceptance, have been completed. Prior to receiving notification for Final Acceptance for the entire Project, the Design-Builder must complete any specified training for City personnel.

Prepare and submit As-Built Plans of the following types in electronic format on Compact Disc – Read Only Memory (CD-ROM) and one reproducible hard copy set:

- (1) Plan and profile sheets;
- (2) Signing and striping;
- (3) Pavement typical sections;
- (4) All Viaduct and Bridge plans;
- (5) Retaining Structure plans;
- (6) Utility relocation plans;
- (7) Drainage Structure plans;
- (8) Cross sections in areas with retaining structures and/or cuts and/or fills in excess of ten feet high; and
- (9) Plans of consolidated access points.

(c) Upon verification that all items have been completed, the final inspection by the City shall be scheduled and conducted within fourteen (14) Calendar Days. If the inspection discloses Work, in whole or in part, as being unsatisfactory, the City will give the Design-Builder the necessary written instructions within the time limit set by the City. Upon correction of the Work, the City will make an additional inspection and notify the Design-Builder accordingly as soon as reasonably possible thereafter.

(d) If there are no outstanding items to be completed or corrected before Final Acceptance of the Project, following inspection, the Design-Builder shall:

- (1) Submit to the City special guarantees, warranties, maintenance agreements, final certifications, and similar documents required under the Contract;
- (2) Deliver tools, spare parts, instructions, and similar items required to operate and maintain the Work; and
- (3) Make changeover of locks to all Equipment and facilities and deliver keys and/or combinations to the City.

When in the opinion of the City the Design-Builder has fully performed the Work under this Contract, the City shall recommend to the Contracting Officer the Final Acceptance of the Work so completed. If the Contracting Officer accepts the recommendation of the City, he/she shall thereupon by letter notify the Design-Builder of such Final Acceptance, and copies of such Final Acceptance shall be sent to other interested parties.

Upon Final Acceptance of the Work, the Contracting Officer will execute a certificate that the Work required by the Contract has been completed and accepted under the terms of the Contract.

SP-6.17 Schedule of Milestones Table, Sample

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SCHEDULE OF MILESTONES (Provided by Design-Builder, Post-Award)						SAMPLE		PAY REQUEST No. _____	
Each SM pay item must sum to a SP price item and total the contract price. Each Pay item below is measured upon schedule completion								Period Ending: _____	
SM	Pay Item	Description	Unit of Meas	SM Value	Restrictions	Planned Achievement	Schedule Activity ID	Current Month Achievement	Cumulative Achievement
				[Dollar Amt]		[Date]		[Actual \$\$ Amt]	[Actual \$\$ Amt]
1	a	Mobilization @ 5% Complete	1 LS		See Note 1				
	b	Mobilization @ 10% Complete	1 LS				991001		
	c	Mobilization @ 20% Complete	1 LS						
2	a	Design- Investigations	1 LS				991003		
	b	Design- Utilities DD	1 LS				041011		
	c	Design- Utilities FD	1 LS				041012		
	d	Design- Foundations DD	1 LS				051011		
	e	Design- Foundations FD	1 LS				051012		
	f	Design- Columns DD	1 LS				061011		
	g	Design- Columns FD	1 LS				061012		
	h	Design- Superstructure DD	1 LS				071011		
	i	Design- Superstructure FD	1 LS				071012		
	j	Design- Rail DD	1 LS				081011		
	k	Design- Rail FD	1 LS				081012		
3	a	Quality Plan, Draft	1 LS				022011		
	b	Quality Plan, Final	1 LS				022012		
	c	Environmental Compliance Plan, Draft	1 LS				022021		
	d	Environmental Compliance Plan, Final	1 LS				022022		
	e	Safety & Security Plan, Draft	1 LS				022031		
	f	Safety & Security Plan, Final	1 LS				022032		
4	a	PM / CM	30 Mo		See Note 2	Starting Month	021011		
	b	Quality Management	30 Mo		See Note 3	Starting Month	021021		
	c	Coordination	30 Mo		See Note 4	Starting Month	021031		
	d	Public Relations	30 Mo		See Note 5	Starting Month	021031		
	e	Environmental Compliance	24 Mo		See Note 6	Starting Month	021041		
5	a	Site Preparation, WP 1	1 LS				101011		
	b	Site Preparation, WP 2	1 LS						
	c	Site Preparation, WP 3	1 LS						
	d	Site Preparation, WP 4	1 LS						
6	a	Utilities Relo, WP 1	1 LS				102011		
	b	Utilities Relo, WP 2	1 LS						
	c	Utilities Relo, WP 3	1 LS						
	d	Utilities Relo, WP 4	1 LS						
7	a	Foundation- Below Grade, WP 1	1 LS				103011		
	b	Foundation- Below Grade, WP 2	1 LS						
	c	Foundation- Below Grade, WP 3	1 LS						
	d	Foundation- Below Grade, WP 4	1 LS						
8	a	Foundation- Columns, WP 1	1 LS				103021		
	b	Foundation- Columns, WP 2	1 LS						
	c	Foundation- Columns, WP 3	1 LS						
	d	Foundation- Columns, WP 4	1 LS						
9	a	Superstructure Segments, WP 1	1 LS				104011		
	b	Superstructure Segments, WP 2	1 LS						
	c	Superstructure Segments, WP 3	1 LS						
	d	Superstructure Segments, WP 4	1 LS						
10	a	Rail Installation & Testing, WP 1	1 LS				105011		
	b	Rail Installation & Testing, WP 2	1 LS						
	c	Rail Installation & Testing, WP 3	1 LS						
	d	Rail Installation & Testing, WP 4	1 LS						
TOTALS (Authorized CCOs should be listed item-by-item, prior to Total Line)									

THIS IS A SAMPLE "SM" TABLE THAT COULD BE FURTHER BROKEN DOWN TO REFLECT DESIGN-BUILDER'S SCHEDULE AND PAYMENT MILESTONES.

<p>Notes on SM Pay Items:</p> <p>(A) Items can be further broken down as long as they represent a verifiable portion of completed work.</p> <p>(B) Materials delivered to site may be listed as SM Pay Items</p> <p>(C) Items listed as SM Pay Items must be included in Design-Builder's Baseline Schedule</p> <p>(D) The SM Pay Items and Baseline Schedule shall utilize the Project WBS (provided by City at NTP).</p>	<p>Notes on Restrictions:</p> <p>(1) Total Mobilization NTE 6% of Construction Value</p> <p>(2) Total Payment NTE 10% of Construction Value</p> <p>(3) Total Payment NTE 5.0% of Construction Value</p> <p>(4) Total Payment NTE 2.5% of Construction Value</p> <p>(5) Total Payment NTE 1.0% of Construction Value</p> <p>(6) Total Payment NTE 2.5% of Construction Value</p>
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